

ONE HUNDRED SIXTEENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
COMMITTEE ON ENERGY AND COMMERCE  
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WASHINGTON, DC 20515-6115

Majority (202) 225-2927

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October 15, 2019

The Honorable Frank Pallone, Jr.  
Chairman  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

The Honorable Anna Eshoo  
Chairwoman  
Subcommittee on Health  
Committee on Energy and Commerce  
2125 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Pallone and Chairwoman Eshoo:

We request that the Committee on Energy and Commerce hold an additional hearing to discuss further the implications of Speaker Pelosi's bill, H.R. 3, the "Lower Drug Costs Now Act of 2019." We feel that the subcommittee hearing held on Wednesday, September 25, while informative, did not adequately examine the implications of H.R. 3 so that members could be properly informed of specifics in the bill. In fact, given the testimony heard in the subcommittee hearing<sup>1</sup> and the implications H.R. 3 could have on denying treatments and next generation cures to our constituents, this process must not be rushed.

Lowering the price of prescription drugs for consumers has been a top priority for this Committee. Thanks to those efforts, the House passed into law H.R. 1892, the Bipartisan Budget Act of 2018, which was responsible for speeding up the closing of the Part D "Donut Hole," among other policies, which led to \$15.9 billion in savings. This past May, the House passed several bills designed to lower the price of prescription drugs (CREATES Act, BLOCKING Act, and a ban on pay-for-delay settlements, among others). Just as recently as September 19, the House included in the Continuing Resolution a policy that would close a loophole in current law that allows drug manufacturers to reduce their Average Manufacturer Price (AMP), thus lowering their rebate obligation on certain drugs.

It is this spirit of cooperation and bipartisanship that all members have come to expect from the Committee, but we are deeply troubled with the way the subcommittee hearing was conducted. Members were given only five full days to prepare for this hearing instead of the

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<sup>1</sup> Benedic Ippolito (Research Fellow, American Enterprise Institute), Testimony on H.R. 3-Lower Drug Costs Now Act of 2019 before House Energy and Commerce Committee, (September 25, 2019) *available at* [https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony-Ippolito-Drug%20Price%20Negotiation\\_092519.pdf](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/Testimony-Ippolito-Drug%20Price%20Negotiation_092519.pdf).

customary two weeks' notice that has long been enjoyed by the Committee. Additionally, the Committee minority was permitted a single witness to participate in the hearing. Limiting the time for members to prepare for this hearing prevented members from more fully understanding the challenges of this bill.

H.R. 3 represents a significant escalation in the role of government in private business. This bill would insert the government into intricate pricing discussions. Under this bill, if a manufacturer does not reach an agreement with Medicare on a drug price, it could be penalized up to 95 percent of the prior year's gross revenue for that product. Additionally, any so-called "negotiations" would have a calculated price ceiling that cannot be exceeded. These policies do not represent negotiation; they are government price setting that will discourage research and development in the U.S. Such policies may be good for China, who would gladly take the market for innovative products,<sup>2</sup> but they hurt U.S. patients.

Despite this broad takeover of the drug manufacturer industry, the Committee has not heard from the Department of Health and Human Services' (HHS) views on the bill. Given that HHS would be responsible for setting these prices, it is essential to hear from HHS about what it sees as the challenges in directly setting drug prices.

We do support provisions within H.R. 3 that would modernize the benefit structure under Medicare Part D. Just this past May, our Committee joined with the Committee on Ways and Means to solicit feedback on how to lower spending for seniors.<sup>3</sup> We received over 80 comments to our request for feedback. We continue to welcome participation in modernizing the Part D benefit structure and believe we will come to a bipartisan agreement on these provisions if these negotiations are separated from the rest of H.R. 3.

House Democrats repeatedly claim to support lowering prescription drug costs for consumers,<sup>4</sup> but nothing in H.R. 3 does that. Other than establishing an out-of-pocket cap, which we support, the proposals in H.R. 3 that are intended to lower the price of prescription drugs would have no guaranteed effect on the out-of-pocket spending for the consumer. However, they would have a dramatic effect on innovation and the development of life-saving treatments.

House Democrats continue to support the takeover of the private marketplace through unworkable and partisan efforts such as "Medicare for All" and H.R. 3. None of these proposals have been given the scrutiny necessary given the magnitude of changes that would result from such bills. It has been almost six months since the Medicare for All Act of 2019 was introduced,

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<sup>2</sup> See Preetika Rana, *China Biotechs Lure Industry Talent in the U.S.*, WALL ST. J., June 16, 2019, <https://www.wsj.com/articles/china-biotechs-lure-industry-talent-in-the-u-s-11560690000?mod=searchresults&page=1&pos=2>

<sup>3</sup> See Susannah Luthi, *House leaders propose restructuring Medicare Part D*, MODERN HEALTHCARE, May 23, 2019, <https://www.modernhealthcare.com/government/house-leaders-propose-restructuring-medicare-part-d>

<sup>4</sup> See Nicholas Florio, *Despite their pledges, Democrats haven't yet lowered drug prices. Here's how they're explaining themselves*, STAT, August 19, 2019, <https://www.statnews.com/2019/08/19/democrat-town-hall-drug-prices/>

Letter to the Honorable Frank Pallone, Jr.

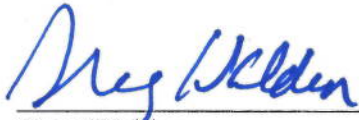
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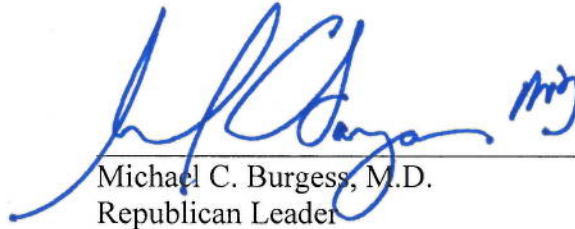
yet the Committee has held no hearings on the bill, despite Republican calls for such a hearing on February 5<sup>5</sup> and May 21.<sup>6</sup>

We encourage you to follow the same process the Committee followed to enact 21st Century Cures, SUPPORTS, HEALTHY KIDS, RAY BAUMS'S Act, and other significant Committee laws. It will require hard work from both sides of the aisle, but it is the best path forward. The process for H.R. 3 so far falls short of our standard.

Sincerely,



Greg Walden  
Republican Leader



Michael C. Burgess, M.D.  
Republican Leader  
Subcommittee on Health

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<sup>5</sup> Letter from The Honorable Greg Walden, Republican Leader, H. Energy and Commerce Committee to The Honorable Frank Pallone, Chairman, H. Energy and Commerce Committee (February 5, 2019) *available at* <https://republicans-energycommerce.house.gov/wp-content/uploads/2019/02/020519-Medicare-For-All-Hearing-Request-Letter.pdf>.

<sup>6</sup> Letter from The Honorable Greg Walden, Republican Leader, H. Energy and Commerce Committee to The Honorable Frank Pallone, Chairman, H. Energy and Commerce Committee (May 21, 2019) *available at* <https://republicans-energycommerce.house.gov/wp-content/uploads/2019/05/052119-Medicare-for-All-Follow-up-Letter.pdf>.